

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1714 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.J. VAIDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judges

SARITA D/O VASUDEV RAMJIBHAI SHARMA

Versus

O P MATHUR SPL I G P(I ..

Appearance:

MR KJ SHETHNA for Petitioner
MR KB ANANDJIWALA for Respondent No. 1
MR AJ DESAI, APP for Respondent No.2-State
MR AMIT SHAH, for Respondent No.3 -
Central Bureau of Investigation.
MR. HAROOBHAI MEHTA, Sr. Counsel for Respondent
No. 4-Union of India.

CORAM : MR.JUSTICE K.J.VAIDYA

Date of decision: 26/12/96

ORAL JUDGEMENT {Per : Vaidya, J.}

1. "Whether, in a case wherein the complaint disclosing cognizable offence which is otherwise required to be filed either in the first instance before the concerned Police Station of the area or for that purpose for whatever reasons when allegedly the officer of the said police station may refuse to register the same and accordingly in the second instance it is required to be filed before the appropriate criminal Court and further particularly when either of these two specific alternative remedies are provided in the Code of Criminal Procedure, 1973, would the High-Court even then in such a case be still justified in exercising its extra-ordinary jurisdiction in entertaining the writ petition in nature of the complaint for cognizable offences under Article 226 of the Constitution of India, thereby in the first place issuing notice to the respondents to show cause for action against him and appropriate order and in the second place, taking into court custody the muddamal revolver allegedly used in commission of the offence ?" This in short and substance is the key question of quite some importance that has arisen for determination in the context of the fact-situation narrated hereunder :-

2. BACKGROUND OF THE CASE :- According to the petitioner, she is a practising Advocate in Ahmedabad since the year 1987 and is residing at her parents' house, situated at 7, Purushotamnagar, Near Ramwadi Bus Stand, Isanpur, Ahmedabad. It is her further case that respondent No. 1-Shri O.P.Mathur, aged about 48 years is a married person, having two children and highly placed police officer working as Special IGP (IB), Gujarat State. He is residing at Officers' Flats, Mithakhali Six Roads, Ahmedabad. Further, according to the petitioner, her father, who died in the year 1982 and the father of the respondent No. 1 were in good terms and because of that, the respondent No. 1 was known to her and her family members and was on visiting terms with them. It is the further case of the petitioner that, on 24.3.1996, she appeared at an interview before the Gujarat High Court to be selected for the post of Assistant/District/ City Court Judge along with other Advocates. That, when the respondent No. 1 came to know about this, he told her that, he loved her and though he was married, he would still like to marry her !! With this strange proposal, according to the petitioner, she was thunder-struck and replied that in her eyes he was just like an elder brother and parent. To this, respondent No. 1 further stated that he would like to keep her at the places wherever he would reside from time to time. Not ending the illegal persuasion here, the respondent

No. 1 also threatened the petitioner that if she did not obey to his wishes he would blackmail her and would further see to it as to how she was going to become a Judge. It is the further case of the petitioner that she got married on 30.7.1996 to Jatin Jayantilal Desai and thereafter the respondent No. 1 tried to blackmail her and also her husband before marriage. By giving anonymous calls, he gave threats and that too, to the extent of even finishing her husband! Despite this quite worrying situation, the petitioner apprehending damage to her future career, if selected as a Judge, preferred to suffer in silence and did not take any legal action against the respondent No. 1. It is further alleged by the petitioner that the respondent No. 1 had also threatened her that she would be abducted at his instance. He also asked her to take divorce from her husband or else, he would kill him and make her a widow and then compel her to co-habit with him !! It is further alleged by the petitioner that the respondent No. 1 gave threat that the intentional act of killing by an accident of a person as it would, would result in her husband's death. Thus apprehending danger even to her body at the hands and or at the instance of the respondent No. 1, she and her sister Shobhana, who is also an Advocate avoided their appearances in the Courts, as far as they could so avoid.

2.1 THE ALLEGED FACTS OF THE INCIDENT THAT TOOK PLACE

ON 22.12.1996:- It is the further case of the petitioner that on 22.12.1996, at about 6.30 p.m., when she was at her parents' place and talking with her sister Shobhana, at that time, the respondent No. 1 came in his Maruti car took out a revolver from his purse and threatened her and her sister with dire consequences. Apprehending danger to their lives, they pounced upon him and prevailed over him. Incidentally enough, in the meantime, petitioner's husband also arrived in his Car to take her to his house and they all prevailed upon the respondent No. 1 and seized the revolver from him and took him in a Car. At this juncture according to the petitioner, the respondent No. 1 told her that he was a Police Officer of very high rank and nobody would dare touch his person and do anything against him. As against that and on the contrary, if they did anything they themselves would lend in trouble. According to the petitioner, due to the scuffle that ensued, the respondent No. 1 received some bleeding injuries. It is under these extra-ordinary circumstances that according to the petitioner, she wanted to approach the Governor of Gujarat and accordingly she tried to ring up His Excellency, but somehow, appointment was not possible.

The petitioner was told by one Dilipbhai at other end that she being an Advocate, could move according to law. Thereafter when she gave a ring to the ADC he also gave the same advice. According to the petitioner thereafter she tried to ring up the Hon'ble Chief Justice of this Court at His Lordship's Bungalow and ultimately went to the residence of learned advocate Mr. K.J Shethna for appropriate legal action against the respondent No. 1. It was further orally alleged before me that when the petitioner was taking advice of learned advocate Mr. Shethna at his residence in the meantime some police personnel got freed Respondent No. 1 from the Car of Jatin Desai which was parked downstairs in compound and made good their escape. This according to the learned advocate Mr. Shethna was subsequent to the petition drawn and learnt when came down stairs. It is under these circumstances that the petitioner has approached this Court filing petition under Article 226 of the Constitution of India. In substance it is alleged by the petitioner that the respondent No. 1 who is highly placed influential police officer being Special IGP (IB), Gujarat State, has committed an offence punishable under Sections 307, 506(2) of I.P. Code, and that she and her family members' life and liberty being in instant danger, has rushed to this Court for urgent orders inter alia praying for the following reliefs:

- (a) Permit the petitioner to produce the respondent No. 1 before this Hon'ble Court and also the weapon seized by her from him.
- (b) Direct the DGP, Gujarat State to register the offences U/Ss. 307 and 506(2) I.P.C. against the respondent No. 1, and to take the sample of his blood and seize blood at the scene.
- (c) Direct the DGP, Gujarat State to immediately give the police protection to the petitioner and her husband.
- (d) Direct the Police, DGP to seize Maruti Car GJ1-AR-2572 in which the respondent No. 1 came to petitioner's mother's place which is lying there.
- (e) Permit the petitioner to produce before this Hon'ble Court the key of the aforesaid vehicle which she had taken out and kept with her.
- (f) Pass such other orders as thought fit.

(g) Grant leave to her to amend this petition.

(h) Direct that the police should accompany the petitioner who should under the police escort go to her mother's house from where she should bring the key of the car referred to in the petition and produce the same before this Hon'ble Court.

(i) Direct that case be registered against the Respondent No. 1 in the C.B.I. Ahmedabad which should investigate the case.

(j) Direct that if for the possession of the weapon, cartridges and other articles taken over by the petitioner from the respondent No. 1 and for the acts against the human body of the respondent No. 1 concerning the incident in question on 22.12.1996, the petitioner, her sister Shobhna, and her (the petitioner's) husband Jatin are to be apprehended in the case, if any, registered against them or any of them, they shall not be arrested without the prior permission of this Hon'ble Court to arrest them."

3. PETITION MOVED AT JUDGES BUNGALOW FOR URGENT ORDERS:- On the basis of the aforesaid alleged facts, on 22.12.1996, at about 10.15 p.m., learned Advocate Mr. Shethna along with the petitioner and her husband had come to my bungalow, for obtaining urgent orders also trying to produce the pouch allegedly containing a revolver, 13 cartridges, some papers and a key of Maruti Car in question parked near the residence of her mother and such other articles which were seized from the respondent No. 1. Now since the matter of the present nature where it is required to be moved for obtaining urgent orders and that too at the residence of the concerned learned Judges at odd hours, ordinarily in the first instance petitioner cannot be permitted to do so without the prior permission, in the second instance, the petition circulated through the Registrar or Court Shirestdar and further that too but for some special and adequate reasons and in the third instance, along with the copy of the petition duly served upon the learned APP appearing for the State. Bearing in mind this normal procedure, since the petitioner and her learned Advocate Mr. Shethna had come to my residence for obtaining urgent orders without the Court Shirestdar and the learned APP, this Court on flatly refusing to entertain the petition, they immediately volunteered to contact Mr. G.J. Bhavsar and Mr. A.J. Desai, learned APP for the purpose, and ultimately brought them before me at my

residence. Thereafter, the learned Advocate Mr. Shethna having regard to the peculiar facts and circumstances of the case viz., firstly, that the respondent No. 1 was a highly placed Police Officer and obviously quite an influential person, no police station officer ordinarily would be ready to record the complaint and register offence against him, more particularly, secondly when the revolver in question which came to be seized by the petitioner from him was in her possession and thirdly further still since the petitioner very much apprehended imminent attack on herself and her family members, submitted that the petitioner had indeed no efficacious alternative remedy left but to rush/approach this Court at odd hours for immediate protection and getting appropriate orders.

3.1 AD-INTERIM ORDERS:- After hearing learned Advocate Mr. Shethna for the petitioner and learned APP Mr. A.J. Desai for the State, the following ad-interim order was passed on 22.12.1996:

"Notice returnable on 24.12.1996. Mr.A.J.Desai learned APP waives the service on behalf of Respondent no. 2-State.

Having regard to the facts and circumstances of the case, Mr.Bhavsar, Court Shirestedar is directed to take in Court Custody following Articles produced by the petitioner:

- (i) Revolver allegedly seized from Mr. O.P. Mathur - the Respondent No. 1 by the petitioner and her sister and her husband, which in turn shall be handed over to the I.O. after the complaint is registered.
- (ii) The white coloured fronty Maruti Car bearing GJ-1-AR-2572 which is lying stationed in Purshottamnagar Society, near the residence of the petitioner's mother, the petitioner is directed to produce key of the said Maruti Car tomorrow which also be kept in Court custody, till the time investigation commences.
- (iii) Thirteen catridges in pouch.
- (iv) Licence for acquisition and other papers in Black Bag of the Res. No. 1.
- (v) Bunch of Keys in Nagar Chasmaghlar Cover.

(2) The Director General of Police Gujarat

State Ahmedabad is directed to take the sample of the blood of Respondent No. 1 and to seize the drops of Blood which are alleged to have fallen at 7, Purshottamnagar, Near Ramvadi Bus Stand, scene of the offence.

(3) Pending further orders DGP is directed to

immediately provide police protection of the petitioner, her husband Jatin and sister Shobhna. Direct service permitted.

Notice to Res. No. 1 to be served by the DGP Ahmedabad. Respondent No. 1 is directed to remain personally present on 24.12.1996 at 11.00 a.m. before the High Court."

4. FURTHER AMENDMENT MOVED BY THE PETITIONER :There -after, on 23.12.1996 the learned Advocate appearing for the petitioner had further moved this Court for the following amendments :-

(i) Ground Nos. 3 & 4 be added as additional grounds-

(3) On 22-12-1996 at about 10.30 p.m. this Hon'ble Court {K.J Vaidya, J.} passed the order at his Lordship's bungalow that the petitioner should produce the key of the car referred to in the petition at 11.00 a.m. on 23-12-1996 before this Hon'ble Court. The key of the said car is in the house of her mother. When the petitioner went to her mother's house at about 12 midnight, she saw a number of motorcycles coming and going and taking rounds around the said house. She suspected foul and apprehended danger to her life. Therefore, she did not venture to enter into the said house. She also did not see the car of which the key is in the said house at the place at which it was there as referred to in the petition.

(4) She suspects that as a counter blast the respondent No. 1 can go to any extent for manoeuvring the case against her. As he is a Police Officer of a very high rank, it is also suspected that the police will not freely and fairly investigate the case.

(ii) Following clauses be added in the prayer clause-

(h) direct that the police should accompany the petitioner who should under the police escort go to her mother's house from where she should bring the key of the car referred to in the petition and produce the same before this Hon'ble Court;

(i) direct that case be registered against the Respondent No. 1 in the C.B.I., Ahmedabad which should investigate the case.

4.1 These were granted and accordingly on the next day, i.e. 24.12.1996, the key of the Maruti Car was produced before this Court which was also ordered to be taken possession under the seal of the Court and kept in the Court custody till further orders.

5. NOTICE WAIVED. HEARD AND FINALLY DISPOSED OFF THE MATTER :- Thereafter, today, on 26.12.1996 the matter as directed has appeared on the Board where the following order came to be passed.

"Rule. learned Advocates appearing for the respondent Nos. 1, 2, 3 and 4 respectively waive service of the Rule. In response to the notice issued against Respondent No. 1 O.P Mathur, he is present before the Court. Having regard to the facts and circumstances of the case, this petition is heard and decided today."

6. PRELIMINARY OBJECTION :- Mr. Anandjiwala, learned Advocate appearing for the respondent No. 1 taking a preliminary objection vehemently submitted that what is alleged in the petition is merely the simple commission of the 'cognizable offence' against the accused in which case, the complaint is required to be filed before the concerned police station, or in case of the petitioner apprehending that the police will not accept her complaint on the ground of respondent No. 1 being an Police officer of high rank, then the same can be filed before the appropriate criminal Court. Mr. Anandjiwala further submitted that when such an ordinary alternative remedy was available under the Code on mere asking and which is required to be invariably followed, there were indeed no special reasons to by-pass the same

by invoking extra-ordinary powers of High Court under Article 226 of the Constitution of India which is sparingly resorted to only when there is no alternative remedy available. Mr. Anandjiwala further submitted that the respondent No. 1 is a responsible police officer and has been trapped and framed-up maliciously by the petitioner and his associates for which he has already filed a criminal complaint against the petitioner and others for the alleged offences punishable under sections 323, 332, 342, 365, 147, 148, 149, 504, 506 (2) of I.P Code before the concerned Police Station. On the basis of these submissions, Mr. Anandjiwala finally urged that this petition be dismissed vacating the ad-interim reliefs accordingly directing the petitioner to avail of the ordinary remedy available under the law, and file complaint before the concerned Police Station.

7. FINDING OF THE COURT ON POINT AT ISSUE :- Dealing with the preliminary objection or say the ultimate submission of Mr. Anandjiwala, at the very outset, it may be stated that having regard to quite exceptional facts and circumstances of the case highlighted in the petition, the same has indeed no substance worth the name and accordingly deserves to be rejected summarily. No doubt, the code does provide for specific alternative remedy for filing complaint for alleged offences. This undoubtedly is good binding law in ordinary circumstances, but then when firstly the case is quite of an extra-ordinary type like the present one where the complainant is a woman and against that accused is a police officer and that too of the rank of IGP against whom serious allegations are made coupled with, secondly, equally important fact that his service revolver was seized from him during the alleged scuffle and was in her possession - a muddamal weapon allegedly brandished in commission of the offence thirdly, the remedy under the Code at the most crucial point of breath taking time was little uncertain as concerned Police Station officer may fail to show required guts and courage to record the complaint against the police officer of quite high rank like the respondent No. 1 and fourthly, the alleged incident having taken place after the Court working hours of the Court of the learned Magistrate, taking into overall consideration allegedly extreme grave situation, urgency of the immediate filing of the complaint and obtaining urgent ad-interim reliefs and for this ultimately racing with the time in all huff and if in case the learned Magistrate for whatever reason refusing either to entertain the complaint or giving ad-interim relief - the petitioner placing herself in the most precarious condition, thereby the remedy apart being not

only not efficacious and meaningful, but becoming rather quite doubtful also, I feel that this Court would be certainly failing in its duty if at such a crucial juncture for the limited purpose even it does not invoke its extra-ordinary power under Article 226 of the Constitution of India, to entertain the petition and grant ad-interim relief prayed for by the petitioner pending hearing of notice to the other side !! Neither a citizen nor for that purpose even the High Court should run the risk of slamming the doors of the Court closed to the petitioner apprehending probable danger mechanically relying on some general principle that when the alternative remedy was available in the Code, it should not entertain the petition even by atleast issuing a notice to otherside to verify the truth of the allegations made in the petition !! Under the most unnerving circumstances in which the petitioner was allegedly attacked and trapped, if the High Court failed to give immediate necessary protection to the petitioner and direction to the Investigating Agency at the appropriate time, then in a given case, there were all likelihood of not only justice being denied to the aggrieved but rather in all probabilities injustice perpetrated further to her and the High Court also losing its credibility as a Justice oriented institution !! Apart this how otherwise indeed the learned Advocate for the respondent No. 1 can be said to have even a semblance of substance in his preliminary objection to entertain this petition and granting ad-interim relief to the petitioner when indeed neither this Court is going to record any complaint of the petitioner nor can it be said that it has assumed investigation of the case adopting the procedure which is essentially required to be followed either by the concerned police station officer or by the learned Magistrate when complaint is made before him ! In fact, as could be seen from the ultimate order as passed at the bottom of this judgement in para 9 where after hearing the concerned parties this Court has ultimately directed the petitioner to have her remedy under the Code itself, directing the concerned Police Station to register her complaint, treating the allegations made in the petition and orally before this Court against the respondent No. 1 at the earliest of cognizable offence, directing the High-Court office to hand over the possession of the muddamal revolver and other articles produced by the petitioner before this Court to the concerned Investigating agency and further directing the DGP to investigate the case. In fact, granting ad-interim reliefs which this Court thought it fit to be given in the exceptional facts and circumstances of the case, in substance, was by way of

abundant caution. Exercising such a discretion by way of stop-gap arrangement can never be said to be this Court exercising any powers contrary to the specific procedure available under the Code. As a matter of fact, when from the facts and circumstances of the case, High Court is *prima facie* satisfied that the petitioner's apprehension of statutory remedy was little doubtful and/or falling short of immediate relief, then in that case constitution being the parent law, as a Constitutional functionary, it is the prime duty of High Court to do that much which is absolutely needed to save the situation by issuing the notice to otherside !! Accordingly, in this view of the peculiar facts and the circumstances of the case, the preliminary and only contentions raised by Mr. Anandjiwala having no substance is hereby over-ruled.

8. THEN WHAT ?? - In view of the aforesaid discussions, the only and ultimate question, at this stage, which now requires to be dealt-with is the direction as to (i) where the petitioner should file the complaint? (ii) which of the concerned police officer be directed to register the complaint ?? and (iii) who should be the Investigating Officer in an exceptional case of such a nature like the instant one ? In this regard, I have heard at length, the learned Advocates appearing for the respective parties. At an earlier stage, the petitioner was quite keen to have her complaint recorded and the investigation carried out by an independent agency like CBI. However, ultimately she had indeed no objection if an order is passed to the effect as stated in detail at the end of the judgment entrusting the investigation to the Director General of Police, Gujarat State, Ahmedabad.

9. REQUEST ON BEHALF OF THE RESPONDENT NO. 1 FOR SOME PROTECTION BY THIS COURT TILL THE TIME HE MOVES FOR BAIL BEFORE THE APPROPRIATE COURT :- At this stage, learned Advocate Mr. Anandjiwala has requested the Court to grant some time to the respondent No. 1 also to enable him to make an application for anticipatory bail for the appropriate Court and till then, he should not be arrested pursuant to the complaint filed by the petitioner. Making good this submission, learned Advocate further submitted that the respondent No. 1 has been maliciously trapped and false complaint has been filed against him to tarnish his image and otherwise his bright service career. Mr. Anandjiwala further submitted that the respondent No. 1 has already filed a complaint for the alleged offences punishable under Sections 323, 342, 147, 148, 149, 504 and 506 (2) of the I.P. Code against the petitioner and others. Under the

circumstances, according to learned advocate Mr. Anandjiwala fair and reasonable opportunity should be given to the respondent No. 1 also to protect his immediate interest against the arrest on the basis of the complaint filed by the petitioner. This submission of Mr. Anandjiwala was vehemently opposed by the learned APP appearing for the respondent-State. Now, in this regard, learned APP ought to have seen that this Court was not granting bail or anticipatory bail to the respondent No. 1. This business is not allotted to this Court. In fact, that is precisely the matter to be decided on merits according to law by the concerned Court taking up such matters. But, any how, having regard to the peculiar facts and circumstances of the case, ends of justice warrant that limited protection as prayed for by both the petitioner and the respondent No. 1 needs to be granted, and is accordingly granted.

10. In the result, this petition is allowed, and accordingly confirming the ad interim order passed on 22.12.1996, the following order is passed:

- (i) The allegations made in the petition filed on 22.12.1996 at 10.15 p.m. shall be deemed to be treated as (a) FIR, (b) filed on 22.12.1996 at 10.15 p.m., the copy of which is annexed herewith.
- (ii) The same shall be registered and numbered now by the Police Station Officer, Vatva Police Station, Ahmedabad. Thereafter, the Director General of Police (DGP), Gujarat State, Ahmedabad, shall investigate the case either by himself or through any responsible Senior Officer of his choice, in case of latter one, with day-to-day supervision by him.
- (iii) Muddamal revolver and other articles produced by the petitioner which have been taken in the Court custody as per the earlier order of this Court shall at once, be handed over to the DGP who shall treat the same as muddamal articles seized during the course of investigation.
- (iv) The sample of the blood of the respondent No. 1 drawn by the Civil Hospital, Ahmedabad as well as the blood found at the scene of the offence shall be taken on record as part of the investigation.
- (v) Having regard to the facts and circumstances of

this case, the DGP, is further directed to see that the investigation of the case is over as expeditiously as possible without any unreasonable delay.

(vi) The petitioner Sarita Desai and her sister Shobhana shall be provided with police protection till the time trial is over and thereafter from time to time, as decided by the Court, if needed. So far as the petitioner's husband Jatin Desai is concerned, he shall be given police protection for the time being, only for one month at his cost and thereafter, as directed by the Court, if asked for, at his cost.

(vii) The moment the chargesheet, if any, is filed, the learned Metropolitan Magistrate, Ahmedabad City shall as expeditiously as possible hold the committal inquiry and on the committal order, if any, passed by him, the learned Sessions Judge or any learned Addl. Sessions Judge, Ahmedabad City to whom the Sessions Case is transferred, shall as expeditiously as possible inquire into and try the Sessions Case and decide the same.

(viii) Turning to protection of the petitioner and her sister granted earlier by this Court in terms of terms of para 20(j) shall continue and according to the petitioner, the necessary and appropriate application for the anticipatory bail before the appropriate Court shall be made on or before 3rd January 1997, if so desired.

(ix) Having regard to the facts and circumstances of the case, the respondent No. 1 is directed to make an appropriate application for anticipatory bail before the appropriate Court tomorrow, i.e. 27.12.1996 and until the same is decided, he shall not be arrested.

Rule is made absolute accordingly.

Prakash*